

FRANK DAVID HILL

IBLA 86-377

Decided August 14, 1987

Appeal from decision of the California State Office, Bureau of Land Management declaring mining claims CA MC-169525, CA MC-169526 null and void ab initio.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers -- Federal Land Policy and Management Act of 1976: Withdrawals -- Mining Claims: Lands Subject to -- Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Reclamation Withdrawals

Mining claims located on lands withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding repeal of the statute authorizing the initiation of such withdrawals.

APPEARANCES: Frank David Hill, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Frank David Hill has appealed from a decision dated February 12, 1986, issued by the California State Office, Bureau of Land Management (BLM), which declared the Frank David Hill Nos. 1 and 2 placer mining claims, CA MC-169525, and CA MC-169526, null and void ab initio because "the land encompassed by the subject mining claims was not open to location on September 25, 1985, the date of attempted location * * *." The decision states that the subject land was "withdrawn, among other lands, under a First Form Reclamation withdrawal for the American River Investigation Reclamation Project by Secretarial Order dated September 14, 1942." Location notices in the BLM case file show the claims to be located in the NW 1/4 SW 1/4 (lot 3 on the master title plat) of sec. 18, T. 11 N., R. 10 E., Mount Diablo Meridian. The 1942 order states that the lands in lot 3 are withdrawn from public entry under first-form withdrawal as provided in section 3 of the Act of June 17, 1902 (30 Stat. 388).

In his statement of reasons for appeal, Hill states that he properly filed notices of location with BLM, that although lot 3 was withdrawn under a

first-form reclamation withdrawal for the American River Investigations Reclamation Project by Secretarial Order dated September 14, 1942, the land was opened to entry by "restoration in 1949"; and that because the land was open to entry on September 25, 1985, his claims are valid. Together with the statement of reasons, Hill has attached a photograph which he states was taken in August 1986, which shows a sign indicating the land shown is "public lands." Hill further states that BLM advised him lot 3 "was open to entry, pursuant to a BLM map" and that "the county of El Dorado, California, also indicates that the subject land was open to entry." Finally, Hill states that he has been billed for and has paid taxes on lot 3.

[1] A mining claim located on a date when the lands are subject to a first-form reclamation withdrawal is null and void ab initio. See, e.g., Sam McCormack, 52 IBLA 56 (1981). The lands in lot 3 were withdrawn on September 14, 1942, under a first-form withdrawal as provided by section 3 of the Act of June 17, 1902 (32 Stat. 388), 43 U.S.C. § 416 (1970), repealed in part effective October 21, 1976, by section 704 of the Federal Land Policy and Management Act of 1976, P.L. 94-579. Further, although section 704 of the Federal Land Policy and Management Act of 1976 (FLPMA), repealed the 1902 statute authorizing the Secretary to withdraw lands "under the first form," the repeal did not affect reclamation withdrawals extant on FLPMA's effective date, October 21, 1976, which were continued in effect, subject to Secretarial review under section 204(1) of FLPMA, 43 U.S.C. § 1714(1) (1982). Sam McCormack, supra. The question remains whether the reclamation withdrawal was still in effect on September 25, 1985, the date of attempted location of Hill's mining claims.

Restoration Order No. 1287, dated October 13, 1949, states that subject to valid existing rights and the provisions of existing withdrawals, certain described lands, including lot 3, are restored to location, entry, or selection as indicated. 1/ The relevant provision of Restoration Order No. 1287 pertaining to lot 3 declares restoration "[u]nder the applicable public land laws" is made from "Power Site Reserve No. 268 of April 29, 1912, and Federal Power Project No. 307, effective May 16, 1922." The Restoration Order specifically states, however, after revoking the 1912 and 1922 withdrawals, that the "above-described land is included in a first form reclamation withdrawal, dated September 14, 1942, in connection with American River Investigations." Clearly, a reading of the Restoration Order can only lead to the conclusion that lot 3 remained withdrawn under the first-form reclamation withdrawal of September 14, 1942.

Hill's allegation that BLM made assurances indicating lot 3 was open to location is not well taken. It is axiomatic that the erroneous opinion of a Federal officer, agent, or employee cannot operate to vest any rights not authorized by law. Lamar and Christine Burnett, 78 IBLA 349 (1984). In

1/ Restoration is made subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, 16 U.S.C. § 818), as amended, and subject to the stipulation that, if the lands are needed for power development, any structures or improvements located thereon will be removed or relocated without expense to the United States, its licensees or permittees.

any event public land orders Nos. 3030 (Apr. 8, 1963), and 3488 (Dec. 2, 1963), relied upon by Hill for the proposition that lot 3 was open to entry, relate entirely to other lands. They could not become the foundation for any belief that lot 3 had been restored to entry, since they relate to other land altogether. Finally, the "map" which Hill furnishes with his statement, a copy of the BLM master title plat, also indicates that the 1942 withdrawal remains in effect as to lot 3. While it does appear that other land in township 11 north was restored to entry, there is no indication that lot 3 has been available for mining location at any time since 1942.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge